

**OFFICE OF THE HEARING EXAMINER
KING COUNTY, WASHINGTON**

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REPORT AND DECISION

SUBJECT: Department of Development and Environmental Services File No. **L03SAX04**

FRED AND MERVILYN PENWELL
Reasonable Use Exception Appeal

Location: 25108 – 121st Court Southwest, Vashon

Appellant: Fred and Mervilyn Penwell, *represented by*
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DECISION SUMMARY:

Department's Preliminary Recommendation:
Department's Final Recommendation:
Examiner's Decision:

Deny appeal
Deny appeal
Deny appeal

EXAMINER PROCEEDINGS:

Hearing Opened:
Hearing Closed:

March 15, 2004
March 15, 2004

Participants at the public hearing and the exhibits offered and entered are listed in the attached minutes. A verbatim recording of the hearing is available in the office of the King County Hearing Examiner.

FINDINGS OF FACT:

1. Fred and Mervilyn Penwell submitted a building permit application on January 30, 2001 to construct a single-family residence on an approximately 19,000 square foot lot in the RA 2.5 zone on Vashon Island. The parcel comprises lot 11 within block 3 of the plat of Quartermaster Heights Addition and is located at the southeast corner of Southwest 250th Way and 121st Court Southwest. The building permit application proposed to construct a 3,222 square foot residence as depicted within a plot plan indicating 4,854 square feet of impervious coverage.
2. County GIS sensitive areas mapping shows a landslide hazard area encroaching onto the Penwell parcel's northeast corner. As a consequence, DDES Site Development Specialist Richelle Rose conducted a site inspection on February 27, 2001 which resulted in her identifying wetlands on the site as well as recent clearing of vegetation. A subsequent site visit by DDES Environmental Scientist Pesha Klein identified wetland soils and plants on the property, areas of fill and vegetative clearing. Ms. Klein's inspection also resulted in the referral of the wetland encroachment issue to the DDES code enforcement section.
3. The DDES code enforcement section issued a notice and order to the Penwells on September 19, 2003, citing the property for clearing and grading in sensitive areas without required permits and approvals. The Penwells through their attorney, Diana Kirchheim, filed a timely appeal of the notice and order. Parallel to the code enforcement action DDES also received and reviewed a reasonable use exception application by the Penwells requesting a waiver of wetland restrictions. The code enforcement process was held in abeyance pending completion of the reasonable use exception review. The Penwells reasonable use exception application was denied by DDES within a decision dated September 3, 2003, which the Penwells have appealed separately.
4. In response to a motion therefor filed by the Penwells' attorney, the hearings on the code enforcement and reasonable use exception appeals were consolidated into a single proceeding. Within a pre-hearing order issued November 25, 2003 the reasonable use exception appeal issues were defined as including whether the minimally necessary reasonable use of the Appellants' property is defined by the character of surrounding residential development; the nature and extent of the functions of the wetland on the Appellants' property; whether DDES staff was justified in regarding the Appellants' reasonable use application incomplete based on deficiencies within their wetland study; the relationship, if any, between wetland values and functions and the applicability of the county's reasonable use standards to the Appellants' property; the appropriateness of the 3,000 square foot site disturbance limitation stated in public rule 21A-24.022 as applied to the Appellants' property; and the relationship of the reasonable use exception review process to constitutional considerations relating to allegations of an unlawful taking of the Appellants' property and violation of the Appellants' rights to substantive due process.
5. There is no conflict as to the existence of a wetland on the Penwells' property that encompasses all of lot 11. There is likewise no dispute that the Penwells have cleared vegetation on the lot within the wetland area. Mr. Penwell stated that the lot had been cleared in 1990 prior to his purchase in 1991, and that he himself again cleared the lot in 1993, 1997 and 2000. He also

stated that fill in the form of gravel driveway access pads were placed on the property in two locations in 2000 and 2001. Mr. Penwell's uncontroverted testimony was that ditching on the property was in existence at the time of his purchase and his activity with respect thereto was limited to maintenance clearing of vegetation. The sensitive areas issues that remain in dispute are whether the wetland should be regulated as a class 2 forested or a class 3 wetland, and whether the Appellants' clearing activities are permitted under county regulations as exempt activities.

6. The Appellants' wetland biologist, Tony Roth, in his March 20, 2003 report describes the wetland on the Penwell property in its current state as being a young scrub-shrub wetland "dominated by invasive species such as soft rush (*Juncus effusus*), Himalayan blackberry (*Rubus discolor*), as well as cottonwood (*Populus balsamifera*), red alder (*Alnus rubra*), and other colonizing species." The critical question is, if the wetland had been left undisturbed as required by county regulations subsequent to November 1990, would it have evolved by fall of 2003 into a forested wetland requiring a class 2 application? KCC 21A.06.1415 provides that wetlands of any size are designated class 2 if they are forested, and KCC 21A.06.1400 defines a forested wetland as one which is "characterized by woody vegetation at least 20 feet tall."
7. The photographic evidence demonstrates that this is a property which if left undisturbed will naturally tend to become dominated by trees. The parcel immediately to the south, which is similar in nature, is dominated by alders, and the year 2000 aerial photographs submitted by staff show a significant growth of small trees in the lot 11 wetland area. It is reasonable to assume that if left undisturbed for a sufficient length of time the Penwell parcel would revert to forested wetland status.
8. The issue to be determined is whether there is adequate photographic evidence to conclude that during the approximately 13 years between November 1990 and September 2003 forested growth would have occurred on the Penwell property of sufficient density and height to warrant the conclusion that the property had evolved from scrub-shrub status to forested conditions. The main basis upon which staff appears to have concluded that the requisite 20 feet of tree growth would have occurred on the property is the existence of a tree in excess of 20 feet located at the property's northwest corner. The hypothesis is that this tree demonstrates the amount of growth reasonably to be projected on the lot overall since 1990. The main problem with the hypothesis is that it appears that this alder was spared by the 1990 site clearing and therefore is more than 13 years in age. An examination of the July 10, 1990 Walker & Associates photograph contained in exhibit 53 shows a small tree remaining in the northwest corner in the location of the tree cited by staff. This fact undercuts the basis for drawing firm conclusions from the present height of the tree now in that location.
9. The discussion at the public hearing also focused on the functions and the values of the wetland on the Penwell property. DDES staff ecologist Jon Sloan, in his comments provided to the reasonable use exception decision, asserts that even in its present degraded state the wetland continues to provide "base-flow support to fish-bearing downstream watercourses, stormwater storage and attenuation, water quality improvement and filtration, and passerine bird habitat, to a limited degree." He also noted that such functions would be greater if the unauthorized periodic clearing activity had not occurred.
10. The record, which includes Mr. Roth's testimony and written comments as well as a hydrologic reconnaissance performed on behalf of the Appellants, suggests that this site's base flow

contribution to fish-bearing downstream watercourses is likely nonexistent while its bird habitat value is probably compromised by the existence of domestic animals within this largely residential neighborhood. The Appellants' hydrologic reconnaissance indicates that the drainage course downstream from the site retains minimal habitat features and little storage occurs on site in the shallow soils above the till layer. Nonetheless, some stormwater storage is provided, some level of water quality filtration exists, and the bird habitat values of a 13 year-old wooded lot would not be inconsequential. Thus a total absence of wetland values and functions cannot be ascribed to this site.

11. Because Appellants' entire property is conceded to be a regulated wetland, there is no dispute that the county's sensitive areas regulations, if applied to the property without modification, would deny to the Appellants all reasonable use of the parcel. It is also agreed that, based on the zoning and the generally residential nature of surrounding development, no other type or kind of use exists that would be reasonable on the property other than single-family residential development. Broadly speaking, the area of disagreement is how large and intensive a use is appropriate at this location. As noted previously, the Appellants are proposing a single story house with a 3,321 square foot footprint with a further 1,532 square feet of impervious surface devoted to a carport and two separate driveways, one on Southwest 251st Street and the other on 121st Avenue Southwest. In addition, the Appellants are proposing to clear the remainder of the 19,000 square foot lot for yard and garden use.
12. In support of their contention that their proposed residential development on lot 11 is similar to size and intensity to existing development within the surrounding neighborhood, the Appellants have submitted as exhibit no. 54 a packet of 25 parcel reports describing development within the immediate vicinity. Each of these 25 reports contains a photograph of a neighborhood property and a printout of the County Assessor's records for the parcel that provides publicly available site development information. Summarizing this information, the cover sheet for each parcel contains the following conclusory statement: "The property owners utilize the entire lot for the house and surrounding yard. They are not subject to any administrative rule limiting the disturbance of the site, including landscaping, to 3,000 square feet."
13. Looking at exhibit no. 54 we observe that 3 of the 25 parcels are undeveloped, 9 of them are developed with mobile homes (41% of the occupied lots), and 6 of the developed lots (27%) are constructed with split level or two story residences. Within the Assessor printouts it appears that the largest residential footprint for first floor square footage among the 22 developed lots comprises 1,660 square feet, or just about one-half of the house footprint requested by the Appellants.
14. The ritual assertions within exhibit no. 54 that the properties depicted therein "are not subject to any administrative rule limiting the disturbance of the site...to 3,000 square feet" appear to be based on the Assessor printout records reciting no environmental restrictions for each parcel. Staff submitted to the record a recorded sensitive areas notice on title for one of the properties cited by the Appellants; this suggests that the Assessor's records are not totally current with respect to recorded property restrictions. In addition, the Assessor's records would be limited under any circumstances to providing information on environmental restrictions that have been formally recorded against the property. The lack of an environmental restrictions notation in the Assessor's file, however, does not imply an absence of applicable environmental restrictions if new development were to be proposed under current regulations. For example, we know that the wetland on the Appellants' property extends south onto adjacent lot 10, block 3, of

Quartermaster Heights Addition. But since there has been no building permit application filed on that property, no environmental restrictions have been identified or recorded. Nonetheless, it is evident that a wetland exists on lot 10 and that its existence will result in an environmental restriction being imposed at such future date that a development permit is submitted.

15. Moreover, the repeated assertions within the exhibit no. 54 documents that the property owners “utilize the entire lot for the house and surrounding yard” is contradicted by recent aerial photographs. The year 2000 aerial photograph admitted as exhibit no. 26, for example, shows minimal clearing of natural vegetation on both lot 8 in block 1 and lot 9 in block 3, but the Appellants have nonetheless characterized these parcels as using the entire lot for house and yard. The Appellants’ characterizations of these properties appear to be more expressions of dogma than accurate factual descriptions, and we decline to rely on these self-serving statements for guidance.
16. A further factual issue that relates to the application of the county’s reasonable use requirements involves the question of whether there are unique circumstances that apply to the Appellants’ property that warrant modifying applicable sensitive areas standards. In this regard, besides the specific wetland values attributable to the sensitive area on the property, the parcel’s corner lot location subjects it to street setbacks on two sides. The Appellants’ proposed use of the property as a retirement residence with a potential use for handicapped individuals can be met by providing basic amenities on the ground floor level. For a house that is proposed to have 3,000 square feet in floor area, adequate handicap access does not require that all usable floor space be on the ground level.
17. The decision issued by DDES on September 4, 2003 concedes that a reasonable use exception is needed for development of the Penwell property. But DDES denied the application for failure to submit the information necessary to make an informed reasonable use determination. The critical items of information not been submitted by the Appellants and plainly necessary for approval of the reasonable use exception include the failure to analyze wetland functions and values based on wooded growth in existence for at least the 13 years since enactment of the 1990 sensitive areas regulations; failure to present alternative designs that could meet the Appellants’ legitimate residential needs while minimizing encroachment on wetland areas; and the complete absence of any kind of mitigation plan for offsetting at another location the impacts of proposed development within sensitive areas. These shortcomings correspond to subparagraphs 1, 3, 4, 6, 7 and 8 of the application requirements stated in Public Rule 21A-24-022 B.

CONCLUSIONS:

1. The existence of a clearing and grading violation on the Penwell site is not in dispute. A grading permit is required to clear or fill within a regulated wetland whether it is denominated a class 2 or class 3 amenity. The wetland classification only affects the level of remedial wetland mitigation required under the grading permit, not whether obtaining such a permit is required.
2. Normally within an appeal proceeding the burden proof rests upon the Appellant as the moving party. However, Hearing Examiner rule XI.B.8 modifies such burden in a code enforcement appeal:

“In a proceeding to consider an appeal or a challenge to a King County agency’s imposition of a penalty or burden on a party or his/her property, the agency shall be required to present

a *prima facie* case based upon competent evidence demonstrating that the legal standard for imposing such a burden or penalty has been met.”

3. We concluded in the code enforcement appeal decision issued concurrently herewith that staff had not made out a *prima facie* case for determining that a class 2 forested wetland exists on the Penwell property. While the property’s natural tendency to gravitate towards a forested condition seems obvious, the only evidence supporting a probable 20-foot height for the growth within the regulatory period beginning November 1990 was an alder near the property’s northwest corner in existence when the July 1990 aerial photograph was taken. The presence of trees off-site to the south greater than 20 feet in height does not tell us anything about the regulatory growing period onsite, unless it is demonstrated that the Penwell wetland is merely the extension of a class 2 wetland lying offsite. While this relationship has been hinted at and may indeed exist, staff testimony did not establish it with any degree of specificity. Similarly, the digital 2000 GIS aerial photographs lack sufficient definition to support any conclusions about vegetation height. It is our conclusion that the Penwell property has not been demonstrated by staff to be a class 2 forested wetland “characterized by woody vegetation at least 20 feet tall” within the relevant timeframe and should be regarded as a class 3 amenity for current regulatory purposes.
4. We believe that staff’s interpretation of KCC 21A.24.330 A is the correct one and that the “valuable functions” language contained therein is not intended to create a separate standard but rather simply to provide criteria for evaluating the list of exceptions starting with subsection E. But it is also clear that a wooded wetland in this location, even if too immature to technically qualify as a forested wetland, would nonetheless provide identifiable biological as well as hydrologic functions; it therefore would not be devoid of valuable wetland functions as arguably specified in KCC 21A.24.330 A 1 as a basis for a regulatory exception.
5. Exceptions to clearing and grading permit requirements for activities within sensitive areas are stated at KCC 16.82.050 Q. Other than limited maintenance of a ditch created before 1990, the Appellants’ clearing activities do not qualify within any of the listed exceptions. A grading permit exception for the “normal and routine maintenance of existing lawns and landscaping” presupposes the existence of established landscaping on the property. None exists on the Penwell parcel. In like manner, the exemption for “emergency tree removal to prevent imminent danger or hazard to persons or property” also does not apply to the Penwell property. Any small trees that might have grown back on the property subsequent to its clearing in 1997 would not be large enough to create a hazard to anything; further there are no structures on or near the undeveloped parcel which might be placed at risk from a hazardous tree. Other than ditch maintenance, the clearing and filling that have occurred on the Penwell property since 1990 are not exempt from county regulation generally or from clearing and grading permit requirements specifically.
6. KCC 21A.24.070 B provides the following standards for review of a reasonable use exception application:

“If the application of this chapter would deny all reasonable use of the property, the applicant may apply for an exception pursuant to this subsection:

 1. The applicant may apply for a reasonable use exception without first having applied for a variance if the requested exception includes relief from standards

for which a variance cannot be granted pursuant to the provisions of KCC chapter 21A.44. The applicant shall apply to the department, and the department shall make a final decision based on the following criteria:

- a. the application of this chapter would deny all reasonable use of the property;
- b. there is no other reasonable use with less impact on the sensitive area;
- c. the proposed development does not pose an unreasonable threat to the public health, safety or welfare on or off the development proposal site and is consistent with the general purposes of this chapter and the public interest; and
- d. any alterations permitted to the sensitive area shall be the minimum necessary to allow for the reasonable use of the property; and any authorized alteration of a sensitive area under this subsection shall be subject to conditions established by the department including, but not limited to, mitigation under an approved mitigation plan.”

7. A variance cannot be granted for a wetland alteration, and compliance with subparagraphs a. and b. of subsection 1. above are not in dispute. The entire Penwell site is a regulated wetland, and application of wetland restrictions to the parcel would prevent any reasonable use of the property. Due to zoning and neighborhood characteristics, the only type of reasonable use available to the property is single-family residential development. Similarly, while encroachment upon the wetland on the property would have adverse impacts, these impacts would not rise to the level of an unreasonable threat to the public health, safety or welfare. What remains to be determined is whether the Appellants’ proposal for development of the entire site without compensatory mitigation is consistent with the general purposes of the sensitive areas ordinance and the public interest, and whether the alterations proposed to the sensitive area are the minimum necessary to allow for reasonable use of the property.
8. As depicted in exhibit no. 54 and the aerial photographs within the record, a typical house within the Quartermaster Heights Addition subdivision has a first floor footprint of about 1,500 square feet, is served by a single driveway, and has a carport and an outside deck. If these amenities were projected on the Penwell property with a bottom story footprint of 1,600 square feet, 600 square feet for a carport and 400 square feet for a connecting driveway, the total disturbance area would be 2,600 square feet, which would leave an additional 400 square feet for decking and landscaping. While the 3,000 square foot disturbance maximum stated in Public Rule 21A.24.022 C 5 is not an inflexible limit, it must be regarded as presumptively valid unless the Appellants demonstrate a cogent reason for its exceedance. The Appellants’ parcel is relatively flat and legitimate handicap access requirements can be met within a 1,600 foot ground floor. If the Penwells feel they need a larger house, it is not unreasonable for them to go up another story to obtain the additional floor space just as 6 of their neighbors have done.
9. In like manner, no necessity has been demonstrated for having two driveways nor an outside concrete pad measuring 2,000 square feet. In point of fact, a number of the residences in the subdivision have retained substantial quantities of native vegetation in their yards, and a requirement for the Penwells to do the same in order to preserve a portion of the wetland is not an unreasonable requirement. Because the wetland extends off site to the south into a currently undeveloped parcel, it makes sense for the Penwell residential development to be concentrated on the northern part of the property in order to allow the southern part to reconnect to the off-site

sensitive area. At this juncture the Penwells have not demonstrated that a disturbance area in excess of 3,000 square feet is necessary for the reasonable use of their property.

10. The purposes of the sensitive areas ordinance are enumerated at KCC 21A.24.010. Among those which are particularly applicable to this reasonable use exception review are subsection D, requiring mitigation of unavoidable impacts to environmentally sensitive areas; subsection E, seeking to limit cumulative adverse environmental impacts to wetlands; subsection F, endeavoring to prevent overall net loss of wetland functions; and subsection J, undertaking to provide county administrators with adequate information to protect sensitive areas. The Penwell proposal to clear the entire 19,000 square foot onsite wetland of all vegetation fails to provide mitigation for impacts, imposes unnecessarily extensive cumulative impacts on wetlands, creates an unnecessary net loss of wetland functions and fails to provide county officials with needed information to evaluate the totality of anticipated impacts to wetland resources. The fact that the wetland on the Penwell site has been historically degraded does not justify continued unfettered abuse of the amenity. Wetlands have a capacity for recovery, and this particular feature connects off-site with areas that are relatively undisturbed. It therefore cannot be concluded that imposing reasonable limitations on the disturbance of this wetland does not serve the purposes of the sensitive areas ordinance and, by extension, the public interest.
11. The Appellants have not demonstrated that their proposal is the minimum necessary to allow for reasonable use of their property. Nor is there any regulatory basis for their refusal to entertain mitigation of proposed wetland impacts. We agree that the mitigation provided should be based on a class 3 wetland designation, which requires such mitigation to be proportional directly to the degree of disturbance authorized, a reasonable requirement. Limiting site disturbance to the northern portion of the property within a limited disturbance footprint would allow the Appellants a reasonable use of their property for residential purposes while preserving the opportunity for restoration of the southern part of the parcel's wetland and its connection to off-site undisturbed wetland areas.
12. Caselaw dealing with constitutional takings and substantive due process requirements underlies the county's reasonable use exception procedures. The constitutional analysis required under the case decisions seeks to assure that regulatory requirements are related directly to legitimate public purposes and that the benefits of such regulation are equitably balanced with the burdens placed upon the individual property owner. Because the reasonable use exception process endeavors to be responsive to constitutional considerations, we are not persuaded that a separate constitutional analysis is either required or appropriate under the circumstances presented here. In particular, the authority to consider unique circumstances created within Public Rule 21A-24-022 D provides exactly the kind of flexibility needed to balance public and private interests as required by caselaw. Evaluation of the specific wetland values impacted and the inconvenience to the property owner are both part of the review mandated under this provision. The fatal flaw in the Appellants' position inheres in their failure to follow the reasonable use exception procedures to a logical conclusion. Rather, they have simply staked out an uncompromising absolutist position and refused to discuss alternative designs, reasonable limitations on development impacts and appropriate levels of mitigation. Due to this unwillingness to pursue to completion the reasonable use review process within its stated parameters, DDES staff was correct in concluding that the Appellants had not demonstrated compliance with application requirements in sufficient degree to support the precise determination required by code as to the permissible extent of the reasonable use exception on their property.

DECISION:

The appeal is DENIED.

ORDER:

1. Within 21 days of the date of this decision the Appellants may be reactivate their current reasonable use exception application by submitting to DDES a revised site plan that either complies with the 3,000 square foot site disturbance standard specified in Public Rule 21A-24-022 or specifically documents unique circumstances warranting a limited exceedance of that standard. A plan to mitigate the impacts of proposed wetland alterations based on a class 3 wetland designation shall also be provided.
2. Denial of the Appellants' reasonable use exception administrative appeal shall be deemed final for all purposes including judicial appeal 21 days after the date of this decision if the deadline stated above for application reactivation is not met.

ORDERED this 24th day of March, 2004.

Stafford L. Smith
King County Hearing Examiner

TRANSMITTED this 24th day of March, 2004, to the following parties and interested persons:

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NOTICE OF APPEAL

Pursuant to Chapter 20.24, King County Code, the King County Council has directed that the Examiner make the final decision on behalf of the County regarding code enforcement appeals. The Examiner's decision shall be final and conclusive unless proceedings for review of the decision are properly commenced in Superior Court within twenty-one (21) days of issuance of the Examiner's decision. (The Land Use Petition Act defines the date on which a land use decision is issued by the Hearing Examiner as three days after a written decision is mailed.)

MINUTES OF THE MARCH 15, 2004, PUBLIC HEARING ON DEPARTMENT OF DEVELOPMENT AND ENVIRONMENTAL SERVICES FILE NO. E0100770/L03SAX04.

Stafford L. Smith was the Hearing Examiner in this matter. Participating in the hearing were Sherie Sabour, Greg Sutton, Richelle Rose, Jon Sloan, Randy Sandin and Pesha Klein, representing the Department; Diana Kirchheim, representing the Appellant; and Steve Dobson, Fred Penwell and Anthony Roth.

The following exhibits were offered and entered into the record:

- Exhibit No. 1 DDES Staff Report on E0100770
- Exhibit No. 2 Plot Plan for B01L0104, parcel 700420-0270 located at 25112 121st Ave. SW
- Exhibit No. 3 Letter to the Penwells from DDES dated May 22, 2001 requesting
Additional information to continue review of B01L0104
- Exhibit No. 4 Code Enforcement Case E0100770 acknowledgement notes
- Exhibit No. 5 Letter to the Penwells from DDES dated June 20, 2001 requesting additional
Drainage and flood plain information
- Exhibit No. 6 Letter to Fred White from the Penwells dated July 2, 2001 regarding quit claim
Of property to the county
- Exhibit No. 7 Penwell October 4, 2001 letter to Pesha Klein asking for a time extension to
Submit additional information requested in May
- Exhibit No. 8 Application for RUE L03SAX04 to construct a residence in the wetland
- Exhibit No. 9 Tony Roth wetland report prepared for the Penwell property
- Exhibit No. 10 Letter to the Penwells from DDES dated June 18, 2003 requesting corrected
And additional information to review the RUE
- Exhibit No. 11 RUE record and decision for L03SAX04 including the Penwell August 18, 2003
Letter responding to the DDES June 8, 2003 letter
- Exhibit No. 12 September 19, 2003 Notice and Order for E0100770
- Exhibit No. 13 September 23, 2003 Notice of Appeal of the L03SAX04 RUE decision
- Exhibit No. 14 September 29, 2003 Statement of Appeal of the L03SAX04 RUE decision
- Exhibit No. 15 October 8, 2003 Notice of Appeal of the Notice and Order E0100770
- Exhibit No. 16 October 13, 2003 Notice of Pre-Hearing Conference
- Exhibit No. 17 October 14, 2003 Statement of Appeal of the Notice and Order E0100770
- Exhibit No. 18 October 29, 2003 Motion to Consolidate Proceedings for E0100770 & L03SAX04
- Exhibit No. 19 October 31, 2003 Notice of Continued Pre-Hearing Conference for L03SAX04
- Exhibit No. 20 November 5, 2003 DDES response to Appellants' Motion to Consolidate
- Exhibit No. 21 November 25, 2003 Pre-hearing Order and notice of hearing
- Exhibit No. 22 December 4, 2003 Elizabeth Deraitus email to the Hearing Examiner reducing
Sensitive areas issues to wetland issues
- Exhibit No. 23 January 5, 2004 Notice of Rescheduled Public Hearing

- Exhibit No. 24 Kroll Map page showing the subject property
- Exhibit No. 25 DDES GIS map showing probable sensitive areas on and near the property
- Exhibit No. 26 DDES GIS map showing 2000 aerial photo of the property
- Exhibit No. 27 Collection of DDES Aerial Photos and site visit photos
- Exhibit No. 28 Tax parcel and situs information from KC DDES computer files
- Exhibit No. 29 File case notes from DDES Permits Plus computer files
- Exhibit No. 30 Site map showing location of the property
- Exhibit No. 31 Section 16.82 Grading Code
- Exhibit No. 32 King County Code 21A.06.1415 providing a definition of wetlands
- Exhibit No. 33 King County Code 21A.24.320-.340 Environmentally Sensitive Areas dealing With wetlands
- Exhibit No. 34 King County witness list for the March 15, 2004 hearing
- Exhibit No. 35 DDES Reasonable Use File L03SAX04
- Exhibit No. 36 Assessors Map Section 24, Township 22 North, Range 2 East
- Exhibit No. 37 Letter dated November 20, 2000 from Greg Kipp to Robert D. Johns,
Not admitted into the record
- Exhibit No. 38 Letter dated September 25, 1995 from Randy Sandin to Anthony Roth,
Not admitted into the record
- Exhibit No. 39 Letter dated September 27, 2003 from Cornerstone Geotechnical, Inc. to
Diana Kirchheim
- Exhibit No. 40 Letter dated June 12, 2001 from Michelle Macias to Mr & Mrs. Penwell
- Exhibit No. 41 Email dated January 9, 2003 from Pesha Klein to Steve Bottheim, Greg Borba
And Jon Sloan regarding pre-app request A02PM106
- Exhibit No. 42 Email dated May 22, 2002 from Pesha Klein to Roger Brucksehn
- Exhibit No. 43 Penwell rough budget from J.S. Jones & Associates, Inc. dated June 20, 2001
- Exhibit No. 44 Email dated December 3, 2002 from Fred Penwell to Joelyn Higgins,
Gary Downing and Pesha Klein
- Exhibit No. 45 Email dated January 17, 2002 from Pesha Klein to Gay Johnson
- Exhibit No. 46 Email dated January 14, 2002 from Pesha Klein to Fred White, Bill Harm
And Gay Johnson
- Exhibit No. 47 Email dated December 21, 2001 from Pesha Klein to Fred White and Bill Harm
- Exhibit No. 48 Recorded plat of Quartermaster Heights
- Exhibit No. 49 Fax from Mr. Penwell to Steve Bottheim, Sherie Sabour and Jon Sloan
Dated July 4, 2003
- Exhibit No. 50 Letter dated July 16, 2003 to Mr. Penwell from Greg Borba
- Exhibit No. 51 Permits Plus comment on the pre-application meeting held with the applicant
On January 16, 2003
- Exhibit No. 52 Email to Pesha Klein from Sherie Sabour dated May 15, 2003
- Exhibit No. 53 August 18, 2003 letter with attachments (photos & letters)
- Exhibit No. 54 Photos taken by Fred Penwell of surrounding lots (taken September 7, 2003)
- Exhibit No. 55 2003 aerial photo
- Exhibit No. 56 Photo dated July 10, 1990 by Walker & Associates
- Exhibit No. 57 Photo dated October 6, 2000 by Walker & Associates
- Exhibit No. 58 Walker & Associates dated May 4, 1980
- Exhibit No. 59 Statement from Pre-Application Meeting with GIS & Permits Plus Information